

**REMARKS**

The Office Action required restriction from among Groups:

- I. Claims 21-28 and 31-58, drawn to a DNA, a plasmid, transformed host cells, a transformed plant, and transformation method, classified in class 800, subclass 278; and
- II. Claims 29-30, drawn to a hybridization method, classified in class 435, subclass 6.

Group I is elected with traverse. As a traverse, it is noted that the MPEP lists two criteria for a proper restriction requirement. First, the inventions must be independent or distinct. MPEP § 803. The two groups are inextricably linked in that claims 29 and 30 of Group II are dependent method claims, directed to a method of using the product of the Group I claims.

Second, searching the additional inventions must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the Examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ...even though it includes claims to distinct or independent inventions.” *Id.* It is respectfully submitted that it would not place an unnecessary burden on the Examiner to search and examine both groups together, as a search for the Group I DNA, plasmid, transformed plant and host cells and transformation method would necessarily include the Group II hybridization method.

Groups I and II should be rejoined into this application, pursuant to MPEP 821.04. *See also* February 28, 1996 "Guideline on Treatment of Product and Process Claims ...", published at 1184 TMOG 86 (March 26, 1996), under which non-elected use or method claims may be rejoined into an application upon allowance of a product claim upon which the use or method claims depend or which contain the same recitation as the use or method claims.

The Office Action further required election of a single nucleic acid sequence: SEQ ID NO:1 or SEQ ID NO:3. SEQ ID NO:1 is elected with traverse. As a traverse, it should be noted that the two molecules represented by SEQ ID NOs:1 and 3 represent members of a single structurally and functionally related genus - plant amino acid transporters. They should not be construed to be patentably distinct inventions. Furthermore, U.S. Patents in this field typically issue with claims involving more than one DNA sequence; *see, e.g.*, U.S. Patents Nos. 5,719,043 (“the ‘043 patent”) and 6,245,970 (“the ‘970 patent”).

Indeed, the attached '043 and '970 patents issued from applications in the lineage of the present application; and, these patents contain claims involving both SEQ ID NOs:1 and 3 (see e.g., claims of the attached '043 patent). The Examiner thus has no undue or serious burden in searching and examining claims involving both SEQ ID NOs:1 and 3, especially as such was done in predecessor application, and as a starting point for searching, the Examiner can look to the art of record on the face of the attached '043 and '970 patents. Hence, there is no basis in fact or law for requiring an election of SEQ ID NO:1 or 3 in the instant application. The requirement for election of SEQ ID NO:1 or 3 should be reconsidered and withdrawn, and such is respectfully requested.

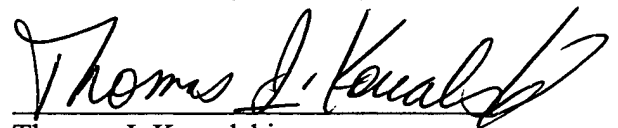
Enforcing the present restriction requirement would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, whereby a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made in the Office Action and there are relationships between the claims of both Groups.

In sum, Groups I and II, and SEQ ID NOs:1 and 3 can be searched and examined in this application, as there is no undue or serious burden in searching and examining these claims together. Thus, reconsideration and withdrawal of the requirement for restriction and early and favorable examination, on the merits, of all of the claimed subject matter are requested.

Respectfully submitted,

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